## **United States Department of Labor Employees' Compensation Appeals Board**

J.M., Appellant	)
and	) Docket No. 12-1679 Issued: March 25, 2013
U.S. POSTAL SERVICE, POST OFFICE, Ringgold, GA, Employer	) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) )
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

## **ORDER GRANTING REMAND**

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On August 3, 2012 appellant timely filed an application for review of decisions of the Office of Workers' Compensation Programs (OWCP) dated February 21 and May 7, 2012. These decisions found that appellant had not met his burden of proof to establish that he sustained an injury in the performance of duty as a rural letter carrier on December 30, 2011, as alleged. In its February 21, 2012 decision, although OWCP accepted that the events occurred as appellant described them, it found that he did not submit rationalized medical evidence establishing injuries to his right hand, arm shoulder and lower back. By the May 7, 2012 decision, OWCP found that the events described by appellant cast serious doubt upon the validity of the claim.

The Director of OWCP filed a motion to remand on November 1, 2012, requesting the Board to set aside the May 7, 2012 OWCP decision and to remand the case for specified further development. The Director noted that OWCP's claims examiner denied appellant's claim without reviewing the new medical evidence that appellant submitted in response to OWCP's findings in its decision of February 21, 2012, "Rather, he reconsidered the finding of the first claims examiner that appellant's injury in fact took place." (Footnote omitted). The Director pointed out that although "the claims examiner is not absolutely foreclosed from reviewing the previous examiner's finding that the incident did not occur as alleged," appellant was not given any notice that the factual portion of his claim remained at issue. On remand, the Director stated

that OWCP will undertake any necessary further development and "will address the medical evidence submitted by appellant." Further, the Director stated that as appellant has three separate right shoulder injury claims, OWCP will determine whether these claims should be doubled with the current one on appeal, pursuant to Chapter 2.400.8(c) of OWCP's procedures.<sup>1</sup>

On November 1, 2012 the Clerk of the Board served appellant with a copy of the Director's motion to remand.

The Board has duly considered the matter and concludes that, as on remand OWCP will review appellant's medical evidence to be followed by any further development as described above and the issuance of an appropriate merit decision to protect appellant's appeal rights, said motion should be granted. Accordingly,

**IT IS HEREBY ORDERED THAT** the motion to remand filed by the Director of the Office of Workers' Compensation Programs is granted. The case is remanded for further proceedings consistent with this order of the Board.

Issued: March 25, 2013 Washington, DC

> Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

> Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board

<sup>&</sup>lt;sup>1</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).